

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
MARC D. SOBEL	)	File No. 670861
	)	
For Consent to Assign the License	)	
For Conventional 800 MHz SMR	)	
Station KKT934, Montrose, California	)	

**ORDER**

**Adopted: February 5, 2004****Released: February 6, 2004**

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. On February 11, 2003, Marc D. Sobel (Sobel) filed a petition seeking reconsideration (Petition) of the dismissal of the above-captioned assignment application<sup>1</sup> by the former Commercial Wireless Division's Licensing and Technical Analysis Branch (Branch).<sup>2</sup> For the reasons discussed below, we deny the Petition.

**II. BACKGROUND**

2. On June 9, 1994, Sobel filed an application seeking approval of the assignment of the license for conventional Business radio (GB) Station KKT934 from M.R. Groff (Groff) to Sobel. In his assignment application, Sobel also sought approval to convert the station license to conventional SMR service (GX) and to add two more sites to the license.<sup>3</sup> On June 24, 2002, the Branch issued a renewal reminder letter to Groff, but the license expired on September 16, 2002, because Groff failed to submit a license renewal application.<sup>4</sup> On January 12, 2003, the Branch dismissed Sobel's assignment application because the license for Station KKT934 had expired.<sup>5</sup>

3. In his Petition, Sobel argues that expiration of the underlying license does not justify the dismissal of a pending assignment application for that license.<sup>6</sup> Sobel argues that under Section 9(b) of

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<sup>1</sup> Petition for Reconsideration, filed by Marc D. Sobel (Feb. 11, 2003).

<sup>2</sup> In late 2003, the Commission's Wireless Telecommunications Bureau was reorganized. Many of the mobile radio services licensing issues formerly under the Bureau's Commercial Wireless Division, including Part 90 conventional Specialized Mobile Radio (SMR) operations, are now under the purview of the Bureau's new Mobility Division. See FCC's Wireless Bureau Announces Reorganization, *Public Notice* (rel. Nov. 24, 2003).

<sup>3</sup> See 47 C.F.R. § 90.615 (listing the 150 General Category channels available for use as 800 MHz SMR General Category channels).

<sup>4</sup> Under former rule Section 90.149(b), effective at the time Sobel filed his assignment application, if a licensee failed to file a renewal application, the license was deemed to have automatically cancelled on the date specified on the authorization. 47 C.F.R. § 90.149(b) (1995). See 47 C.F.R. § 1.955(a)(1) (currently effective rule).

<sup>5</sup> ULS Automated Letter Information, Reference No. 1691209 (Jan. 12, 2003).

<sup>6</sup> Petition at 1-2.

the Administrative Procedure Act (APA),<sup>7</sup> his pending assignment application extended the effectiveness of the underlying license until the Commission acted on his application, and thus his application should have been processed even though the license expiration date had passed.<sup>8</sup> Sobel further argues that the application would have been granted before the license expired, but the Wireless Telecommunications Bureau (Bureau) “ignored” his assignment application so that it could dismiss the application after the underlying license expired.<sup>9</sup>

### III. DISCUSSION

4. As an initial matter, we note that the arguments Sobel has raised in this case are identical to arguments previously rejected in two recent Commission orders.<sup>10</sup> As the Commission held in both cases, a pending assignment application does not extend the expiration date of an underlying Commission license.<sup>11</sup> A licensee remains subject to Commission rules, including operational and renewal provisions, even where an assignment or transfer of control application is pending for the underlying license.<sup>12</sup> As the licensee for Station KKT934, Groff was responsible for filing a renewal application notwithstanding the pending assignment application. As a result of Groff’s failure to renew his authorization – a fact that Sobel does not dispute – the license for Station KKT934 expired on its own terms. Because an expired license cannot be assigned,<sup>13</sup> the Branch correctly applied the Commission’s rules when it dismissed the assignment application.

5. The Commission has also rejected Sobel’s contention that his assignment application is protected from dismissal under Section 9(b) of the APA. Section 9(b) provides, in relevant part, that “[w]hen the licensee has made timely and sufficient application for a renewal or new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.”<sup>14</sup> Sobel argues that the assignment application “is properly deemed” an application for renewal or a new license with respect to an ongoing activity that, if granted, would permit the continuation of that activity.<sup>15</sup> As the Commission

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<sup>7</sup> 5 U.S.C. § 558.

<sup>8</sup> Petition at 1-2.

<sup>9</sup> Petition at 2.

<sup>10</sup> In the Matter of James A. Kay, Jr., Application for Modification of and Consent to the Assignment of the License for Business Radio Service Station WIK902, *Order*, 18 FCC Rcd 2366 (2003) (*Kay-Padilla*); In the Matter of James A. Kay, Jr., Application for Consent to Assign the License for Conventional SMR Station WNXR890, Newbury Park, California, *Memorandum Opinion and Order*, 18 FCC Rcd 7585 (2003) (*Kay-Cordaro*). In each case, Kay filed an assignment application in 1994, which was dismissed several years later because the underlying license expired while the assignment application was pending.

<sup>11</sup> *Kay-Cordaro*, 18 FCC Rcd at 7586-87, ¶ 5; *Kay-Padilla*, 18 FCC Rcd at 2367, ¶ 5.

<sup>12</sup> See In the Matter of Peacock’s Radio and Wild’s Computer Service, Inc., and 21<sup>st</sup> Century Wireless Group, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 15016, ¶¶ 5, 6 (2001); In the Matter of Applications of Robert D. Ryan, *Order on Reconsideration*, 17 FCC Rcd 15530, 15532, ¶ 8 (PSPWD 2002); see also Biennial Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476, 11485, ¶ 21 (1999).

<sup>13</sup> *Kay-Cordaro*, 18 FCC Rcd at 7586-87, ¶ 5; *Kay-Padilla*, 18 FCC Rcd at 2367, ¶ 5 (citing In the Matter of Applications of Transit Mix Concrete and Material Company for Assignment of License for Station WNQ776, Huntsville, Texas; Request for Renewal of License for Station WNQ776, Huntsville, Texas, *Memorandum Opinion and Order*, 16 FCC Rcd 15005, 15005-06, ¶ 2 (2001)).

<sup>14</sup> 5 U.S.C. § 558(c).

<sup>15</sup> Petition at 1-2.

has previously stated, Section 9(b) of the APA applies to renewal and new applications, not to assignment applications, and it has rejected the notion that a license assignment should be treated as an initial grant or a license renewal for purposes of this statutory provision.<sup>16</sup> Consistent with the Commission decisions in *Kay-Padilla* and *Kay-Cordaro*, the Branch correctly determined that Section 9(b) does not apply here.

6. We also find no merit in Sobel's allegation that delay in the processing of his application was "a scheme," on the part of the Bureau, to ignore his application until after the underlying license expired.<sup>17</sup> Sobel has presented no evidence whatsoever that the Bureau's delay in acting on his application was part of a "scheme." The uncharacteristic delay<sup>18</sup> in acting on Sobel's assignment application was the result of a pending hearing proceeding regarding Sobel's fitness to be a Commission licensee.<sup>19</sup> Sobel's allegation overlooks the fundamental fact that it was Groff's failure to file for renewal, not the staff's inaction on the assignment application, that caused the license for Station KTT934 to expire. Because Groff failed to file a renewal application, the license expired on its own terms, and, therefore, as we stated above, there was nothing to assign.

#### IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (405), and Sections 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, the Petition for Reconsideration filed by Marc D. Sobel on February 11, 2003, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Katherine M. Harris  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>16</sup> *Kay-Cordaro*, 18 FCC Rcd at 7587, ¶ 6; *Kay-Padilla*, 18 FCC Rcd at 2368, ¶ 7. In *Kay-Padilla*, the Commission stated that it has been previously found that a license that expires on its own terms is not protected under Section 9(b) of the APA. *Kay-Padilla*, 18 FCC Rcd at 2368, ¶ 7 (citing *Atlantic Richfield Co. v. United States*, 774 F.2d 1193 (D.C. Cir. 1985)).

<sup>17</sup> Petition at 2.

<sup>18</sup> As the Commission noted in *Kay-Cordaro*, in 2002, the Bureau disposed of 77 percent of assignment applications within 90 days, 95 percent within 180 days, and 99 percent within one year. *Kay-Cordaro*, 18 FCC Rcd at 7587, ¶ 8 n.22.

<sup>19</sup> See In the Matter of Marc Sobel, Applicant for Certain Part 90 Authorizations in the Los Angeles Area and Requestor of Certain Finder's Preferences, *Decision*, 17 FCC Rcd 1872 (2002) (revoking Sobel's licenses for facilities operating in the 800 MHz band, denying his pending 800 MHz applications, and dismissing his finder's preference requests for those facilities based on the finding that Sobel transferred control of some of facilities without Commission authorization and that he lacked candor about the status of these facilities in a sworn affidavit) (Martin, K. concurring in part, dissenting in part); *recon. denied*, *Memorandum Opinion and Order*, 17 FCC Rcd 8562 (2002); *appeal dismissed on procedural grounds sub nom.* Sobel v. FCC, No. 02-1174, slip op. (D.C. Cir. Oct. 2, 2002), *recon. denied*, In the Matter of Marc Sobel, Applicant for Certain Part 90 Authorizations in the Los Angeles Area and Requestor of Certain Finder's Preferences, *Memorandum Opinion and Order*, FCC 04-2 (rel. Jan. 15, 2004).